UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 1 – SUBREGION 34

COMMUNITY HEALTH SERVICES, INC. and AMERICAN FEDERATION OF TEACHERS, CT	Cases 01-CA-191633 February 27, 2019

BRIEF OF RESPONDENT COMMUNITY HEALTH SERVICES, INC. IN SUPPORT OF ITS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE THE HONORABLE ELIZABETH M. TAFE

This case arises under the Board's August, 2016 decision in *Total Security Management*, 364 NLRB No. 106, which held that an employer must engage in some limited bargaining with a newly certified union before imposing certain types of discipline on bargaining unit employees. After the Charging Party, American Federation of Teachers, CT ("AFT" or Union") was certified as the bargaining representative of a group of Medical Assistants and Dental Assistants at Community Health Services, Inc. ("CHS"), but before the parties had reached an initial collective bargaining agreement, one of the bargaining unit members engaged in misconduct that CHS management believed could warrant discipline. CHS placed the employee on paid administrative leave and then CHS's Chief Legal and Human Resources Officer met one-on-one with an AFT representative to discuss the incident and possible discipline. More than a week after that meeting, CHS discharged the employee.

The Administrative Law Judge ("ALJ" or "Judge") held that CHS's discussion with the AFT representative did not meet the bargaining requirements set forth in *Total Security*. This case illustrates why *Total Security* was wrongly decided and should be reversed. However, the employer in this case actually complied with any reasonable reading of *Total Security's* mandate. CHS provided the Union with notice and an opportunity to bargain before imposing discipline. It gave the Union sufficient advance notice to provide for meaningful discussion concerning the grounds for imposing discipline and the grounds for the discipline chosen. The Union had the opportunity to provide exculpatory or mitigating information to CHS, to point out any perceived disparate treatment, and to suggest alternative courses of action. CHS and the Union did not reach agreement or impasse on the issue, but *Total Security* makes clear that an employer is not required to bargain to agreement or impasse prior to imposing discipline. Moreover, the ALJ explicitly went even further than *Total Security*'s limited bargaining mandate, holding that the limits set forth in Board's decision in that case should be ignored because, she felt, they "disturb the fundamental doctrine set forth in Sections 8(a)(5) and 8(d)."

The Judge also held that Section 10(c) of the Act did not bar reinstatement and back pay, even though the undisputed evidence demonstrated that CHS terminated the employee for "cause" as that term has been consistently applied under Section 10(c). In doing so, the ALJ totally ignored undisputed evidence of the employee's long history of misconduct and the employer's significant efforts to fix that misconduct, refusing to even make any findings related to that history of misconduct. The ALJ applied the incorrect allocation of the burden of proof set forth in *Total Security*, which should be reversed, but even under that misallocation the overwhelming and undisputed evidence demonstrated the reason for the termination and that that reason fell within Section 10(c)'s definition of "cause."

Finally, even if *Total Security* remains good law and CHS failed to comply with it, the Judge improperly recommended remedies that are unsuited for these circumstances. The ALJ refused to toll back pay after the Union ignored CHS's request to continue bargaining (as contemplated by *Total Security*). The ALJ also ordered that CHS "expunge from its files any and all references to the discharge" of the employee at issue, something that is totally inconsistent with *Total Security*'s anticipated continuation of bargaining over discipline.

In short, this case is a master class in why *Total Security* was wrongly decided: the decision's mandate is unclear and difficult for parties to apply, it leads to satellite litigation at a time when a newly certified or recognized union and the employer are trying to reach a first collective bargaining agreement, it can result in unwarranted windfall payments to employees, and even experienced administrative law judges are unable to apply its mandates within the framework of pre-existing Board law.

I.

FACTS

The essential facts in this case are, in large measure, undisputed.

On January 3, 2017, Annie Howley, the Nurse Manager in CHS' Adult Medicine Department, ran into Kylie O'Donnell, CHS' Business Improvement Quality Coordinator, and noticed that Ms. O'Donnell seemed upset. Tr. 310-12 (Howley). Ms. Howley asked Ms. O'Donnell what was troubling her and, after some prodding, Ms. O'Donnell reported that she had just had a very negative interaction with Dirgni Baker, one of the Medical Assistants who worked in the Adult Medicine Department. Tr. 459-60 (O'Donnell); Tr. 311-12 (Howley).

It was then Ms. Howley who got upset. Over the prior eighteen months, Ms. Howley had been dealing with Ms. Baker's repeated disruptive and disrespectful conduct through coaching, counseling, and discipline, and nothing seemed to work. GC-6; Tr. 271-309 (Howley). Ms. Howley gathered some additional facts, speaking with others who had been present during the interaction, and then sent Ms. Baker home, putting her on a paid administrative leave pending further investigation. Tr. 315 (Howley); Respondent's Exhibit 1. The paid administrative leave, in and of itself, had no immediate or inevitable impact on Ms. Baker's tenure, status, or earnings at CHS.

Ms. Howley worked with Genea Bell, CHS' Chief Legal and Human Resources Officer, to obtain statements from witnesses, review Ms. Baker's lengthy file, and interview Ms. Baker about the January 3 incident. Tr. 65-70 (Bell). The various witnesses to the January 3 incident all told essentially the same story, one in which Ms. Baker was somewhat rude to Ms. O'Donnell in an area near patients and families of patients. GC 6, pp. 1-8; Tr. 455-57 (O'Connell); Tr. 493-96 (Santiago). Ms. Baker's file reflected repeated problems with a variety of co-workers and significant efforts by Ms. Howley and others to fix those problems. GC-6, pp. 9-30.

On January 10, 2017, Ms. Bell met with Ole Hermanson, Ms. Baker's union representative to discuss the January 3 incident. Tr. 22-25 (Hermanson); Tr. 66-68, 70-73 (Bell). They met first with Ms. Baker for approximately 30 minutes, and then Ms. Bell and Mr. Hermanson met without Ms. Baker for approximately another 10-15 minutes. Tr. 22-25 (Hermanson); Tr. 71-72 (Bell). During that meeting, Ms. Bell indicated that while the January 3 incident standing alone might not seem very serious, it did not stand alone and was consistent with Ms. Baker's past behavior for which CHS had repeatedly disciplined her. Tr. 72, 188 (Bell); GC-11 p. 8; Tr. 23 (Hermanson: "She had said that Dirgni had, you know, a prior work

history that was problematic."; "She said that Dirgni had already had a final warning and that she had, you know, a complicated work history.") Tr. 46-50 (Hermanson). Mr. Hermanson suggested that further counseling might be an appropriate alternative to termination. Tr. 23 (Hermanson: "I said that I felt like if there were – if there was something that we needed to do, if we wanted to discuss Ms. Baker going to EAP or having more training, that we could talk about that."); Tr. 48-49 (Hermanson); Tr. 72 (Bell). Mr. Hermanson did not ask to review Ms. Baker's file or make any inquiry into the nature of the prior incidents or CHS' response to those incidents. Tr. 73 (Bell). Mr. Hermanson did not request any additional information from CHS before January 18, 2017.

Following the meeting with the Union, CHS, through Ms. Howley and Ms. Bell, decided that Ms. Baker's employment with CHS should end. The January 3 incident was a continuation in a pattern of rude, disrespectful, and disruptive behavior that had been going on for more than a year and a half. Tr. 316 (Howley).

At the hearing, CHS presented direct evidence of the rude, disrespectful, and disruptive behavior in which Ms. Baker had engaged for more a year and a half, along with direct evidence of the discipline, counseling, and coaching that CHS gave her to try to correct that behavior.

Anne Howley, CHS' Nurse Manager in its Adult Medicine Department, started working at CHS in May, 2015. In June, 2015, a manager informed Ms. Howley that a patient had complained to her that Ms. Baker had been rude to a receptionist, Rosie Pagan. Tr. 272-75 (Howley); GC 6, p. 9/30. Ms. Baker had snapped at Ms. Pagan stating "look at my face" while circling her hands around her face. GC 6, p. 9/30. Ms. Pagan testified at the hearing and confirmed this behavior. Tr. 436-437 (Pagan). Ms. Howley also personally observed Ms. Baker

snap at a patient and make a summoning gesture. Tr. 275-76 (Howley); GC 6 p. 9/30. Ms. Howley personally spoke with Ms. Baker and explained that she needed to be more professional and to have a better tone with her co-workers. Tr. 274-76 (Howley); GC 6, p. 9/30. Ms. Howley documented that interaction, and it was provided as part of the termination paperwork. GC 6 at 9/30. Ms. Baker testified at the hearing and did not challenge the accounts of Ms. Pagan and Ms. Howley concerning this incident. Tr. 203-65 & 525-545 (Baker).

Shortly after she began at CHS in May, 2015, Ms. Howley emphasized to employees that they should not use cell phones in the clinical area. Tr. 280 (Howley). In early July, 2015, Ms. Howley had a specific conversation with Ms. Baker reminding her not to use her cell phone in the clinical area. Tr. 281 (Howley); GC 6, p. 10/30. On July 14, 2015, Ms. Howley observed Ms. Baker several times using her cell phone in the clinical area. Tr. 281-82 (Howley). Ms. Howley issued Ms. Baker a formal warning for that infraction. Tr. 281-82 (Howley); GC 6, at 10/30. Ms. Baker testified at the hearing but did not challenge Ms. Howley's account of this incident. Tr. 203-65 & 525-45 (Baker).

In September, 2015, Ms. Baker was rude to a co-worker in the manner in which she complained about the co-worker transferring a call. Tr. 283-84 9 (Howley); GC 6 at 11/30. Ms. Howley observed Ms. Baker being excessively distracting to staff. Tr. 282 (Howley); GC 6 at 11/30. And on October 1, 2015, Ms. Howley observed Ms. Baker using her cell phone in a clinical area. Tr. 281 (Howley); GC 6 at 11/30. Ms. Howley issued Ms. Baker another formal warning for this behavior. GC 6 at 11-12/30. Tr. 281 (Howley). Ms. Baker testified at the hearing but did not challenge Ms. Howley's account of this incident or deny that she received this warning. Tr. 203-65 & 525-45.

In the first three months of 2016, Ms. Baker repeated much of the same misconduct. Ms. Howley testified that, because of communication issues with the provider with whom Ms. Baker was working, CHS reassigned Ms. Baker to another provider. Tr. 288-89 (Howley); Tr. 486-87 (Ashman). Ms. Howley met several times with Ms. Baker in the beginning of 2016 to address her performance issues. Tr. 288-89 (Howley); GC 6 at 14/30. On March 8, 2016, Ms. Baker rudely yelled at a co-worker, Maria Guzman, which Ms. Guzman confirmed at the hearing. Tr. 402-405 (Guzman); GC 6 at 13/30 & 14/30. As a result of these issues, Ms. Howley issued Ms. Baker a "Notice of Final Warning" that once again made clear what was expected of her and how she had been failing to meet expectations. GC 6 at 14-16/30. Ms. Baker testified that she received and understood the warning. Tr. 542-43 (Baker). Ms. Baker did not contradict the accounts of Ms. Howley or Ms. Guzman concerning the underlying incidents.

Later in March, 2016, Ms. Baker was rude to another co-worker, Kemauli Brown. Tr. 398 (Brown). Mr. Brown informed Ms. Howley of the incident. Tr. 398 (Brown); GC 6 at 17/30; Tr. 291-92 (Howley); GC 6 at 17/30. Ms. Howley discussed it with Ms. Baker. Tr. 292 (Howley).

In June, 2016, Ms. Baker had a dispute with another co-worker, Angelita Capo. Tr. 292-95 (Howley); Tr. 487-88(Ashman); GC 6 at 18-21/30. Ms. Howley attempted again to work with Ms. Baker to improve her behavior and interactions with co-workers. Tr. 295-97 (Howley). Ms. Howley and Ms. Ashman, the Medical Assistant Supervisor, ran four "Team Building" sessions with Ms. Baker and Ms. Capo to improve inter-personal relations. Tr. 295-97 (Howley); Tr. 488-89 (Ashman); GC 6 at 22/30. Ms. Baker confirmed that she attended these team building sessions. Tr. 542-43 (Baker). Ms. Baker did not dispute the evidence concerning the underlying misconduct.

In October, 2016, Ms. Baker had another negative interaction with yet another co-worker. Nicoll Rodriguez testified that Ms. Baker grabbed Ms. Rodriguez' arm as Ms. Rodriguez attempted to assist Ms. Baker in finding a patient. Tr. 408 (Rodriguez). Ms. Rodriguez was so upset about the interaction that she cried. Tr. 433 (Rodriguez). After discussing the matter with her boyfriend, Ms. Rodriguez approached Ms. Baker to discuss the interaction. Tr. 425 (Rodriguez). When the two were unable to agree as to what occurred, they went to discuss it with Ms. Howley. Tr. 408 (Rodriguez); Tr. 544 (Baker); Tr. 298-300 (Howley). Ms. Baker told one version of events first, and then changed her version of events. Tr. 409 (Rodriguez); Tr. 301 (Howley); R-3. While disagreeing with some of the details as relayed by Ms. Rodriguez, Ms. Baker confirmed the broad outlines of the interaction and her dispute with Ms. Rodriguez. Tr. 540-46 (Baker); GC 6 at 30/30.

Finally, on January 3, 2017, Ms. Baker once again acted rudely to a co-worker. Ms. Baker was concerned about some scheduling issues related to the provider with whom she worked. Tr. 453-59 (O'Donnell). Ms. Baker started a conversation with Ms. O'Donnell by saying her first name: "Kylie." Ms. O'Donnell responded by saying "what?". Tr. 456 (O'Donnell); GC 6 at 4/30. Rather than continue the conversation, Ms. Baker took offense and said "Don't say that to me, that's not a yes, What is just a question." Tr. 456 (O'Donnell). Ms. O'Donnell was taken aback by Ms. Baker's tone, which she found to be rude. Tr. 457 (O'Donnell). This occurred in the reception area in view of waiting patients. Tr. 454-56 (O'Donnell). Alexandra Santiago, a CHS employee who was also present, testified that Ms. Baker's tone and attitude were rude towards Ms. O'Donnell. Tr. 493 (Santiago); GC-6 at 5/30. Ms. Baker confirmed that she said words to the effect of "What is a question. Yes is the answer." Tr. 229 (Baker); GC 6 at 6/30 & 8/30).

CHS had tried counseling, formal discipline, and even a formal team building exercise lasting several days, and the January 3 incident caused Ms. Howley to believe that none of their efforts had worked. Tr. 316 (Howley). CHS had given Ms. Baker's union notice of the issue, met with the union representative to discuss the matter and potential disciplinary options, and listened to the Union's suggestion. On January 18, 2017, Ms. Bell informed Ms. Baker and Mr. Hermanson that CHS was terminating Ms. Baker's employment. GC-5; GC-6.

At that point, Mr. Hermanson requested to continue bargaining concerning Ms. Baker's situation. Tr. 31 (Hermanson); GC 8. Ms. Bell responded, agreeing to continue meeting. GC 9; Tr. 32 (Hermanson). The issue was briefly raised during a bargaining session for new collective bargaining agreements for two bargaining units in February, 2017 but that session was too full to discuss the issue at any length. Tr. 41-42 (Hermanson); Tr. 522-24 (Volpe). In March, 2017, Ms. Bell e-mailed Mr. Hermanson and said that if the Union wanted to continue to discuss Ms. Baker's discipline that CHS would be glad to do so. Tr. 37-38 (Hermanson); GC 10. Mr. Hermanson never responded, and no one else from the Union followed up on that offer. Tr. 38 (Hermanson).

II.

LEGAL ARGUMENT

I. CHS Did Not Violate The Act

The Board's decision in *Total Security* was at odds with decades of experience under the Act and should be reversed. If the Board chooses to retain *Total Security* as precedent, then this case provides an opportunity to clarify its holding to avoid problematic satellite litigation like this in the future. CHS fully complied with *Total Security's* requirement that it give the Union

notice of potential discipline and an opportunity to comment on its appropriateness. The ALJ overreached in applying *Total Security* to the largely undisputed facts of this case and the Board should clarify that *Total Security* requires nothing more than was done in this case.

1. *Total Security* Was Wrongly Decided (Exceptions 4, 5, 6, 15, 19, 24, 40)

When the Board adopted the new obligations of *Total Security*, Member Miscimarra issued a scholarly and comprehensive dissent. *Total Security*, 364 NLRB No. 106 at 17-41. There is no need here to reiterate member Miscimarra's comprehensive 24-page explanation as to why *Total Security* should be reversed. Respondent, therefore, wholly incorporates that dissent by reference. *Total Security* was wrongly decided and should be reversed.

As member Miscimarra predicted, the new bargaining obligation imposed by *Total Security* is "governed by complicated rules, qualifications and exceptions." *Total Security* at 17. The fact that the ALJ in this case rejected some of the "qualifications and exceptions" that the Board majority tried to graft onto a bargaining obligation shows just how unworkable *Total Security* is in practice. This case raises practically all the problems outlined by member Miscimarra in his bullet points on pages 18-20 of *Total Security*. Particularly prescient was his statement that "if parties engage in discipline bargaining, the likely outcome will be widespread disagreement."

2. CHS Satisfied *Total Security* By Bargaining.

a. There Was No Duty to Bargain Before Placing Ms. Baker on Paid Administrative Leave (Exceptions 6, 9).

The *Total Security* decision was very clear that the duty to bargain that the Board discovered in that case was limited:

> First, as explained above, the pre-imposition obligation attaches only with regard to the discretionary aspects of those disciplinary actions that have an inevitable and immediate impact on an employee's tenure, status, or earnings, such as suspensions, demotions, or discharge. Thus, most warnings, corrective actions, counselings, and the like will not require pre-imposition bargaining, assuming they do not automatically result in more serious discipline, based on an employer's progressive disciplinary system, that itself would require such bargaining.

364 NLRB No. 106 at 8.

On January 3, 2017, CHS placed Ms. Baker on paid administrative leave. Tr. 233-34 (Baker); Tr. 315 (Howley); Tr. 43 (Hermanson); R-1. She continued to receive her normal pay. R-1; GC-20. The paid administrative leave had no inevitable and immediate impact on Ms. Baker's tenure, her status, or her earnings. Paid administrative leave does not even rise to the level of a warning or a corrective action; those actions can stay in an employee's file and influence future decisions, even if they do not dictate them. Paid administrative leave, in contrast, does none of those things. Ms. Baker testified that Ms. Howley did not tell her that she was being disciplined in any sort of way by being sent home on January 3, 2017. Tr. 237 (Baker).

The ALJ sidestepped this issue because she found that Ms. Howley "sent Baker home on January 3 with the full intent of discharging her, and that the subsequent period of 2 weeks of administrative leave were part and parcel of Respondent's effort to discharge Baker." (ALJD p. 17). This simply makes no sense; it is undisputed that CHS did not discharge Ms. Baker until January 18, 2017. The mere fact that one of the decision-makers wanted to discharge Ms. Baker as of January 3, 2017 does not convert what would otherwise be a matter that did not require bargaining into something that did require bargaining. Under that logic, an investigatory interview, a stern talking to, or even a sidelong glance, might give rise to a bargaining obligation if the person doing the interviewing, the talking, or the glancing, harbored the intent to discharge

the employee (after, to complete the analogy to this case, interviewing the employee, discussing possible disciplinary action with the Union, and engaging in a comprehensive review of the employee's work record with the Chief Legal and Human Resources Officer). Such sleight of hand by the ALJ cannot convert a paid administrative leave into discipline that has "inevitable and immediate impact" on the employee's tenure, her status, or her earnings.

Whether Ms. Howley had wanted to terminate Ms. Baker's employment before Ms. Bell met with the Union is irrelevant. As the *Total Security* decision itself states:

> [T]he obligation to provide the union with notice and an opportunity to bargain arises *after* the employer has decided, at least preliminarily, that discipline is warranted, but before the employer has actually imposed discipline.

364 NLRB No. 106 at 7, FN 17 (emphasis in original). Thus, whether or not Ms. Howley believed that termination was appropriate on January 3, 2017, or any time between then and the meeting between Ms. Bell and Mr. Hermanson, is irrelevant to whether CHS satisfied its bargaining obligation under *Total Security*; in fact that case anticipates that bargaining will generally occur *after* the employer has some idea that discipline is appropriate.

Even if *Total Security* remains good law, no reasonable application of that case and its principles would trigger a bargaining obligation in advance of a paid administrative leave. That portion of the ALJ's decision was incorrectly decided under *Total Security*.

b. CHS Satisfied Any Bargaining Obligation Before Discharging Baker on January 18, 2017 (Exceptions 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 40).

The core of the decision in this case is the ALJ's conclusion that CHS did not satisfy its *Total Security* obligation to bargain with the Union before it actually discharged Ms. Baker.

The *Total Security* decision was very clear that the duty to bargain over actual discipline was itself limited:

> [W]here the pre-imposition duty to bargain exists, the employer's obligation is simply to provide the union with notice and an opportunity to bargain before discipline is imposed. This entails sufficient advance notice to the union to provide for meaningful discussion concerning the grounds for imposing discipline in the particular case, as well as the grounds for the form of discipline chosen, to the extent this choice involved an exercise of discretion. It will also entail providing the union with relevant information, if a timely request is made, under the Board's established approach to information requests. . . . The aim is to enable the union to effectively represent the employee by, for example, providing exculpatory or mitigating information to the employer, pointing out disparate treatment, or suggesting alternative courses of action. But the employer is not required to bargain to agreement or impasse at this stage; rather, if the parties do not reach agreement, the employer may impose the selected disciplinary action and then continue bargaining to agreement or impasse.

264 NLRB No. 106 at 8-9. CHS fully complied with this mandate.

CHS gave the union advance notice and an opportunity to bargain well before imposing discipline on Ms. Baker. CHS notified the Union by e-mail on January 4, 2017 of the paid administrative leave and the need for further investigation. Tr. 44 (Hermanson); Tr. 65 (Bell); R-1. While the ALJ stated that this "documentation does not provide the Union with prior notice or opportunity to bargain about Baker's discharge" (ALJD p. 18, line 44-45), the January 4 Memorandum, which was sent to Ms. Baker and her union representative states quite clearly:

> It came to my attention that, on January 4, 2017, you initiated a confrontation in the reception area with several other staff members regarding a provider's schedule. It was reported that this incident occurred in the presence of patients who were waiting for appointments. After a preliminary investigation, I believe that your conduct may have negatively impacted clinical operations and failed to meet expectations for patient services. **As you know, you were issued a Final Warning on March 11, 2016 for similar conduct.**

Respondent's Exhibit 1 (emphasis added). Such a statement would cause any employee or union representative to conclude that serious discipline was under consideration.

After meeting on January 10, 2017 with Mr. Hermanson and Ms. Baker to get Ms. Baker's version of the events of January 3, 2017, Ms. Bell met alone with Mr. Hermanson and discussed possible outcomes of the incident. Tr. 49 (Hermanson); Tr. 71 (Bell). That one-on-one meeting lasted about 15 minutes. Tr. 49 (Hermanson) Tr. 71 (Bell). During that meeting, Ms. Bell emphasized Ms. Baker's prior disciplinary history (Tr. 47 – Hermanson), and Mr. Hermanson offered alternatives to discipline (Tr. 48 – Hermanson).

The ALJ concluded that this meeting between Ms. Bell and Mr. Hermanson was not bargaining about discipline under *Total Security*. If that is the case, then what *was* that meeting about? The investigatory meeting, with *Weingarten* representation, was over. The employer's Chief Legal and Human Resources Officer and the Union's primary representative spent 15 minutes discussing Ms. Baker's work history, possible disciplinary action, and possible alternatives to discipline.

CHS did not impose discipline on Ms. Baker until over a week later, on January 18, 2017. GC 7; Tr. 30 (Hermanson). The Union clearly had sufficient advance notice.

Moreover, the advance notice given to the Union provided sufficient information for the Union to meaningfully discuss both the grounds for imposing discipline in the particular case and the grounds for the form of discipline chosen. The January 4, 2017 notice to Ms. Baker and her Union representatives noted that Ms. Howley had been informed of a confrontation with other staff members regarding a provider's schedule and that her conduct "may have negatively impacted clinical operations and failed to meet expectations for patient service." R1; Tr. 44 (Hermanson). It further noted Ms. Baker's disciplinary history for similar infractions. R1. At the meeting between herself and Mr. Hermanson, Ms. Bell noted that the January 3 incident,

while perhaps not itself terribly serious, could be "problematic" given Ms. Baker's history of similar problems and behaviors. Tr. 47-48 (Hermanson); Tr. 721 (Bell). Thus the Union was well aware, more than a week before CHS finalized the decision to terminate Ms. Baker, that CHS was considering serious discipline, up to termination, because of Ms. Baker's work record and the final January 2017 notice. Moreover, Mr. Hermanson testified that as of the January 10, 2017 meeting "I certainly thought that discipline was a possibility and a likelihood." Tr. 49.

With that advance notice, the Union could have requested additional information from CHS, but it chose not to do so. Between the January 10, 2017 meeting between Ms. Baker and Mr. Hermanson and the January 18, 2017 decision to terminate Ms. Baker's employment, the Union did not request to review Ms. Baker's previous disciplinary history; it did not request to review any other incidents involving Ms. Baker's interactions with co-workers; it did not request information related to any counseling or training given Ms. Baker or other employees; it did not request information related to the way CHS treated other employees involved in disputes or the circumstances surrounding any such instances. In short, the Union chose not to pursue any additional information or bargaining with CHS between January 10, 2017 and January 18, 2017.

The ALJ faulted CHS because the individual CHS chose to be its bargaining representative, its Chief Legal and Human Resources Officer, was not the sole and final decision-maker with regard to the termination decision. An employer has the right to select its own bargaining representative. *See* Section 8(b)(1)(b) of the Act. Genea Bell is CHS' Chief Legal and Human Resources Officer. Tr. 62-64 (Bell). She reports directly to CHS' Chief Executive Officer. Tr. 63 (Bell). Ms. Bell exercises significant control over labor and human resources matters at CHS. Tr. 177-80 (Bell). Ms. Bell exercised significant control over the decision to terminate Ms. Baker's employment. There is absolutely no basis for arguing that

CHS violated *Total Security* by sending Ms. Bell rather than another representative to meet with the union about the potential discipline. Moreover, even after Ms. Bell told the Union representative that she would not be making the "final" decision the Union never asked to speak to whichever individual or individuals would be making the final decision.

CHS fully complied with the teaching of *Total Security*. It notified the Union that it was considering discipline for Ms. Baker, it met with the Union and discussed various options, it gave the Union plenty of time to digest that meeting and ask for additional information if it wanted, and only then finalized and implemented its decision. Requiring an employer to do more than CHS did in this case would put form over substance and make compliance with the limited bargaining obligation of *Total Security* even more unwieldy and formalistic than the case itself calls for.

c. The Union Failed to Respond to CHS' Invitations to Continue Bargaining (Exceptions 18, 21)

The *Total Security* decision makes clear that "[a]fter fulfilling its pre-imposition responsibilities as described above, the employer may act, but it must continue to bargain concerning its action, including the possibility of rescinding it, until it reaches agreement or impasse." 364 NLRB No. 106 at 9. CHS invited the Union to participate in such bargaining on at least two occasions, but the Union put off the first invitation and simply ignored the second invitation. Tr. 77-78 (Bell).

On Thursday, January 19, 2017 the day after CHS e-mailed the termination paperwork to the Union, Mr. Hermanson emailed Ms. Bell requesting dates to bargain over the issue. GC-8. Ms. Bell responded that afternoon, indicating that "I am available next Monday morning, Tuesday afternoon between 12 and 4 and anytime on Wednesday." GC-9. Mr. Hermanson did

not respond by e-mail, but testified that he suggested that the matter be discussed when the parties next met to engage in collective bargaining. Tr. 33 (Hermanson). The bargaining session that had been scheduled for January 24, 2017 was cancelled at the Union's request. Tr. 33 (Hermanson). When the parties finally did meet on February 16, 2017, the session involved discussions with a newly appointed federal mediator concerning both the Medical Assistant bargaining unit of which Ms. Baker was a member and the Licensed Professional bargaining unit, also represented by the Union. Tr. 33-34 (Hermanson); Tr. 521-25 (Volpe). As Dr. Julie Volpe testified, the meeting was, by previously agreed ground rules, limited to two hours and most of that time was spent discussing some of the more difficult unit-wide issues facing the two bargaining units. Tr. 522-525 (Volpe). While Mr. Hermanson may have demanded that Ms. Baker be reinstated, the format did not allow for extended discussion of the issue that evening. Tr. 524 (Volpe).

On March 30, 2017 Ms. Bell e-mailed Mr. Hermanson offering to continue bargaining over Ms. Baker's discipline. GC 10. Tr. 26-38 (Hermanson). Neither Mr. Hermanson nor anyone else from the Union ever responded to Ms. Bell's offer. Tr. 38 (Hermanson).

Not only did CHS follow the dictates of *Total Security* before terminating Ms. Baker, the Union failed to properly continue bargaining after the termination despite repeated invitations from CHS to do so. The Union chose in this case to rely exclusively on the Board's processes – which as shown in this case can take years – rather than fulfill its obligation to continue bargaining with the employer. The Board should not reward that strategy.

II. Section 10(c) of the Act Precludes Reinstatement or Back Pay

As explained above, CHS did not commit an unfair labor practice. However, even if CHS' notice to and meeting with the Union in advance of terminating Ms. Baker's employment did not satisfy the Board's decision in *Total Security*, the Board should not order that CHS reinstate Ms. Baker or pay Ms. Baker any back pay because CHS terminated Ms. Baker for cause. Reinstating Ms. Baker or paying her back pay would not effectuate the purpose of the Act and, more importantly, is expressly prohibited by the Act itself.

Section 10(c) of the Act empowers the Board to order employers that have committed an unfair labor practice to cease and desist from such practice and to take certain affirmative actions, including reinstatement of employees with or without back pay, if it determines that doing so would effectuate the purposes of the Act. 29 U.S.C. § 160(c). However, that section contains a critical explicit limit on the Board's power when it comes to reinstatement of employees and the payment of back pay:

> No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged or payment to him of any back pay, if such individual was suspended or discharged for cause.

29 U.S.C. § 160(c).

CHS terminated Ms. Baker as a result of repeated misconduct that had been the subject of progressive discipline, coaching, and counseling. That history of repeated misconduct was supported at the hearing not only by disciplinary documents but by direct testimony from the participants and witnesses to such misconduct over the course Ms. Baker's employment. The ALJ, however, chose to entirely ignore such direct evidence, failing even to make factual findings on the issues. Ms. Baker was rude (or to use the ALJ's word "snippy") to a fellow

employee on January 3, 2017 and, given the similarity of that conduct to the conduct for which Ms. Baker had repeatedly been warned and counseled in the past, CHS had ample cause to terminate her employment. The General Counsel did not allege that CHS' decision to terminate Ms. Baker had any unlawful motive, and no evidence at the hearing supported such a conclusion.

1. The Legal Standard for "Cause" Under Section 10(c) of the Act (Exceptions 22, 23)

Section 10(c) of the Act prohibits the Board from reinstating an employee or providing back pay, "if such individual was suspended or discharged for cause." 29 U.S.C. § 160(c). The Board has had several occasions to explore the meaning of "cause" under Section 10(c) and has consistently held that it means any reason that is not prohibited by the Act.

The Board first expounded on what the term "cause" meant under Section 10(c) in *Taracorp Industries*, 273 NLRB 221 (1984). In that case, the Board found that the employer failed to honor an employee's request for union representation in an interview with management that could lead to discipline, a violation of the Supreme Court's decision almost a decade earlier in *NLRB v. Weingarten*, 420 U.S. 251 (1975). The employer terminated the employee following that improper investigatory interview. The question was whether the Board could order reinstatement and back pay as a remedy for that violation when the reason for the termination was the employee's own misconduct, not the employer's failure to allow the employee union representation.

The Board in *Taracorp* unequivocally held that:

> an employee discharged or disciplined for misconduct or *any other nondiscriminatory reason* is not entitled to reinstatement and back pay even though the employee's Section 7 rights may have been violated by the employer in a context unrelated to the discharge or discipline.

273 NLRB at 222 (emphasis added). The Board further explained:

> It is important to distinguish the term "cause" as it appears in Sec. 10(c) and the term "just cause," which is a term of art traditionally applied by arbitrators in interpreting collective bargaining agreements. Just cause encompasses principles such as the law of the shop, fundamental fairness, and related arbitral doctrines. Cause, in the context of Sec. 10(c) effectively means *the absence of a prohibited reason.* For under our Act management can discharge for good cause, or bad cause, or no cause at all. It has, as the master of its own business affairs, complete freedom with all but one specific, definite qualification: it may not discharge when the real motivating factor is to do that which the Act forbids. [*NLRB v. Columbia Marble Works*, 233 F.2d 406, 413 (5th Cir. 1950]

273 NLRB at 222, n. 8 (emphasis added). The Board that decided *Taracorp* felt so strongly about this point that it restated it a third time in the opinion:

> We emphasize again that the Board will *not* seek to determine whether the asserted "cause" for the discharge was good cause or just cause. The extent of our authorized inquiry is whether or not the employee was discharged for union or other protected concerted activity or whether the reason for discharge was, itself, an unfair labor practice.

273 NLRB at 223 n. 14 (emphasis added). The *Taracorp* standard for "cause" under Section 10(c), therefore, is "any reason that is not itself a violation of the Act."

The Board next addressed the scope of 10(c) at length in *Anheuser-Busch, Inc.*, 351 NLRB 644 (2007). In that case, the employer violated the Act by installing video cameras without first bargaining with the union that represented a group of employees. The video cameras uncovered evidence that certain employees had engaged in misconduct. The employer confronted employees (with union representation) with the video evidence of the misconduct and the employees admitted the misconduct (use of illegal drugs at work). The employer discharged five employees and suspended 11 employees. The question for the Board in that case was whether it could, or should, order reinstatement and back pay for the employees where the misconduct would not have been uncovered but for the employer's unilaterally and unlawfully

implemented means. The Board in that case quoted liberally from *Taracorp* and held that it did not have the authority to reinstate the employees or to provide back pay to any of the employees.

The Board has not yet addressed the issue of cause under 10(c) in the context of *Total Security* or of its over-ruled predecessor, *Alan Ritchey*. However, at least one ALJ grappled with the issue in a case decided under *Alan Ritchey*. In *Western Cab Company*, 365 NLRB No. 78 (2017), the Board reversed an ALJ's decision that had applied *Alan Ritchey* to events that occurred prior to its decision in *Total Security*. The ALJ decision in that case, issued in September, 2015, however, addressed the applicability of the "cause" provision of Section 10(c) in the context of a failure to bargain with a newly certified bargaining representative in advance of imposing discipline. In that case, the ALJ applied the long-standing *Taracorp* standard, stating that "cause, in the context of Sec. 10(c), effectively means the absence of a prohibited reason." *Id.* at 10.

Total Security itself did nothing to change this longstanding and consistent definition of "cause" under Section 10(c). Because the *Total Security* decision was not retroactive, the Board did not have to actually apply its decision to the facts of that case. Instead, it gave general guidance as to future remedial issues, including the issues raised under Section 10(c). The majority in *Total Security* (364 NLRB No. 106) addressed Section 10(c) at pages 13-15 of the opinion. It recognized that Section 10(c) imposed limits on its remedial authority and held that "its application will turn on the specific facts of each case." The Board did not change the legal standard that "cause, in the context of Sec. 10(c), effectively means the absence of a prohibited reason," as stated in *Taracorp*, but rather set forth a procedural framework to determine whether there was "cause" under that standard in any given case:

> We will construe Section 10(c) to preclude reinstatement and back pay if the respondent establishes, consistent with the allocation of proof below, that the employee's suspension or discharge was for cause. In order to do so, the respondent must show that: (1) the employee engaged in misconduct, and (2) the misconduct was the reason for the suspension or discharge. In response, the General Counsel and the charging party may contest the respondent's showing, and may also seek to show, for example, that there are mitigating circumstances or that the respondent has not imposed similar discipline on other employees for similar misconduct. If the General Counsel and charging party make such a showing, the respondent must show that it would nevertheless have imposed the same discipline.

Total Security, 364 NLRB at 15.

Thus, Section 10(c) prohibits back pay and reinstatement if the employer's reason for termination is actually because of the employee's misconduct. *Total Security* did not purport to define "misconduct," instead leaving in place the longstanding *Taracorp* interpretation that it is a reason "not otherwise prohibited by the Act."

2. ***Total Security* Improperly Allocated the Burden of Proof in Section 10(c) Matters (Exception 24).**

The *Total Security* decision improperly placed the burden of proof for Section 10(c) on the Respondent. For the reasons set forth in the dissent of Member Miscimarra, at pages 34-35 of *Total Security*, whenever the General Counsel seeks reinstatement or back pay, the General Counsel should bear the burden of showing that such a remedy is authorized by the Act and should therefore bear the burden of pleading and proving that discipline was not for "cause" and used in Section 10(c). However, in this case Respondent has satisfied even the improperly allocated burden placed on it by *Total Security*.

3. **CHS Had "Cause" to Discharge Dirgni Baker (Exceptions 22, 23, 25-38).**

CHS had cause under Section 10(c) to terminate Ms. Baker's employment. Ms. Baker engaged in misconduct and that misconduct was the reason CHS terminated her employment,

and CHS therefore has established cause under the procedure set forth in *Total Security*. The General Counsel has not shown any mitigating factors or disparate treatment that undermine either of those conclusions. The Board, therefore, may not order reinstatement or award back pay.

a. Baker's Misconduct was the Reason CHS Terminated Her Employment (Exceptions 22, 23, 25-38).

CHS established, through the direct testimony of those involved, that Ms. Baker engaged in misconduct through her repeated failure to adhere to CHS policies and her negative interactions with co-workers. The largely testimony of Ms. Baker's co-workers Kemauli Brown (Tr. 397-400), Maria Guzman (Tr. 401-06), Nicoll Rodriguez (Tr. 406-34), Rosie Pagan (Tr. 434-38), and Alexandra Santiago (tr. 492-519) was wholly consistent with the testimony of Ms. Baker's supervisors, Joan Ashman (Tr. 483-492) and Ms. Howley. It is impossible on this record not to conclude that Ms. Baker engaged in "misconduct," and the ALJ did not make any such factual finding.

The next step of the *Total Security* Section 10(c) "cause" inquiry is whether "the misconduct was the reason for the suspension or discharge." 364 NLRB No. 106 at 15. The uncontested testimony and documentary evidence establishes, without a doubt, that Ms. Baker's repeated misconduct was the actual reason CHS terminated Ms. Baker. Neither the General Counsel nor the Charging Party has even suggested any alternate motivation that CHS may have had in terminating Ms. Baker's employment.

CHS informed Ms. Baker that it was terminating her employment by a letter dated January 18, 2017. GC 7. In that letter, CHS provided the following explanation of the reasons for the decision to terminate employment:

> [Y]our employment with Community Health Services is being terminated effective today, January 18, 2017 for poor work performance including the failure to conduct yourself in a professional manner. Details are described in the Employee Warning Notice provided to you under separate cover.

GC 7. The Employee Warning Notice incorporated into the termination letter by reference is the 30 page document entered into evidence as General Counsel Exhibit 6. That document sets forth, in detail, the misconduct described above. Respondent's stated reason for termination, therefore, was the misconduct that was proven at the hearing.

The decision to terminate Ms. Baker's employment was made by Ms. Howley and by Ms. Bell. Tr. 316 (Howley); Tr. 178-79 (Bell). Both testified that the reason for the termination decision was the accumulated instances of misconduct described in GC 6 and above. Tr. 316 (Howley); Tr. 178-79 (Bell). Contemporaneous communications between Ms. Bell and Ms. Howley concerning the situation that were introduced at the hearing by the General Counsel confirm that Ms. Baker's repeated instances of problems with co-workers motivated the decision to end her employment. GC 30; GC 31; GC 32; GC 33; GC 34; GC 35; GC 36; GC 37; GC 38.

There are no allegations in this case that CHS had any unlawful motive in terminating Ms. Baker's employment.

The ALJ's refusal to even make findings of fact related to the year and a half of misconduct by Ms. Baker and CHS's attempts to fix her performance reflects an almost willful avoidance of the reason Respondent terminated Ms. Baker's employment. CHS told Ms. Baker and the Union on January 4, 2017 that it was concerned about the January 3, 2017 incident in light of her prior record. R1. CHS told the Union on January 10, 2017 that the January 3, 2017 incident was of particular concern because of Ms. Baker's record of misconduct. Tr. 23, 46-50 (Hermanson); Tr. 72, 188 (Bell). Ms. Howley thought that CHS should fire Ms. Baker after the

October, 2016 incident. Tr. 347-49 (Howley). The organization, however, did not act on Ms. Howley's desire at that time. Tr. 348 (Howley). Ms. Howley also thought that CHS should fire Ms. Baker after the January 3, 2017 incident. Tr. 355-57 (Howley). Following the January 3, 2017 incident, the meeting with Ms. Baker, the subsequent meeting with Ms. Baker's Union representative, and a review of Ms. Baker's misconduct over the preceding 18 months, Ms. Bell agreed with Ms. Howley. Tr. 78 (Bell). The January 3, 2017 incident triggered the termination, which was the result of Ms. Baker's misconduct over the prior 18 months.

b. The General Counsel Has Not Shown That Ms. Baker's Misconduct was Not the Real Reason for CHS's Decision to Terminate Her Employment (7, 8, 22, 23, 37).

CHS established both that Ms. Baker engaged in misconduct and that misconduct was the reason CHS terminated her employment. The next step under *Total Security* is that:

> the General Counsel and the charging party may contest the respondent's showing, and may also seek to show, for example, that there are mitigating circumstances, or that the respondent has not imposed similar discipline on other employees for similar misconduct. If the General Counsel and charging party make such a showing, the respondent must show that it nevertheless would have imposed the same discipline.

364 NLRB No. 106 at 15.[1] As noted above, *Total Security* did not evince any indication that it was changing the substantive law that "cause" under Section 10(c) is "any reason that is not itself a violation of the Act." 273 NLRB at 222, n. 9.

Neither the General Counsel nor the charging party (1) contested the Respondent's showing that the reason it terminated Ms. Baker's employment was her 18 months of

[1] By stating that "respondent must show that it nevertheless would have imposed the same discipline" *Total Security* adopts the language of cases in which the employer is shown to have been motivated by an unlawful factor. *Wright Line*, 252 NLRB 1083 (1980). In a *Wright Line* situation, the "nevertheless" means that the employer must show that even if it had not considered protected activity, it would have made the same decision. In a pure *Total Security* case such as this one, there is no improper motive upon which the "nevertheless" may work. This is another reason that *Total Security* was wrongly decided and is essentially unworkable.

misconduct; (2) demonstrated mitigating factors concerning that misconduct; or (3) showed that Respondent had not imposed discipline on any employees who had anything like a similar history of misconduct.

As noted above, neither the General Counsel nor the charging party posited any possible motive for CHS' decision to terminate Ms. Baker other than the misconduct set forth in the termination documents.

The General Counsel and the charging party also did not show mitigating factors that are relevant to this inquiry. General Counsel and charging party chose to limit Ms. Baker's hearing testimony to only the January, 2017 incident and the October, 2016 incident. While Ms. Baker downplayed her culpability in those incidents, she offered no mitigating factors – such as a lack of knowledge of expectations, or particular outside stressors in her life that might cause her to be rude with co-workers, or entrapment, or remorse, or any other mitigating factors. Instead, General Counsel and charging party chose to simply follow Ms. Baker's lead and downplay those two instances of misconduct as "no big deal."

Nor did the General Counsel or charging party show that there was any other employee who had 18 months of misconduct with repeated discipline, coaching and counseling, whom CHS did not terminate. The General Counsel noted that an employee in CHS' Behavioral Health Department had been placed on a coaching and counseling program due to some concerns with her behavior. GC 13; Tr. 165-66 (Bell). That employee improved her behavior and remained employed with CHS. Tr. 166 (Bell). The evidence at the hearing showed that Ms. Baker did not improve her employment despite multiple efforts.

The General Counsel also noted that an employee in adult medicine engaged in a negative interaction with a co-worker and, after intervention by the Union, received a warning. GC 14 & 15; Tr. 167-68 (Bell); Ms. Baker had been given several warnings before CHS decided to terminate her employment. Neither of the two comparators had a sustained history of inappropriate conduct that had not been solved despite significant management effort and progressive discipline.

4. Reinstatement and Back Pay Would Not Effectuate the Purposes of the Act in This Case (Exception 41).

Even if Section 10(c) did not explicitly prevent an order reinstating Ms. Baker and granting her back pay, the Board should refrain from doing so in this case because it would not effectuate the purposes of the Act. The Board in *Taracorp*, noted that even if it were not precluded by statute from ordering reinstatement as a remedy for a *Weingarten* violation, it would refrain from doing so because it would not further the Act. In that context, the Board noted that "the Board's expansionist policies in the *Weingarten* field have served to 'encourage the transformation of investigatory interviews into formalized adversary proceedings, a result that the Supreme Court clearly wished to avoid.'" *Taracorp*, 273 NLRB at 223.

In this case, it is undisputed that CHS gave notice to the Union before it imposed discipline and that CHS met with the Union to discuss the proper level of discipline. CHS also offered to continue bargaining with the Union after it terminated Ms. Baker's employment, and the Union ignored that offer. If the Board determines that this was not sufficient bargaining under *Total Security*, then the purposes of the Act can be fully effectuated by the Board issuing a decision clarifying the scope of *Total Security*, ordering CHS to act differently if the situation

recurs, and alerting other employers in a similar situation what is expected of them. There is no need to give a windfall to Ms. Baker or an effective monetary penalty to CHS.

The *Total Security* situation only occurs in the period between initial certification of a union as the representative of a group of employees and the consummation of an initial collective bargaining agreement. First contracts involve a large number of issues about which employers and the newly certified unions must negotiate, and in many cases involve an employer's first exposure to the bargaining rules that have been built up over the course of eight decades under the Act. Employers and Unions may both make mis-steps during this period – providing for the reinstatement of an employee whom the employer has determined should be separated and potentially significant back pay could very easily become the tail that wags the dog of the collective bargaining process, making resolution of unfair labor practice charges and an initial agreement that much more difficult. With possible reinstatement and back pay at issue, unions will find it difficult to reach a compromise with the employer without fear of a claim that it breached its duty of fair representation to the employee at issue. In those circumstances, disputes such as this one will go forward when they would otherwise be resolved.

At least in cases like this, in which the employer at the very least made an effort to bargain in advance of making a final disciplinary decision, the ALJ and the Board should refrain from turning a technical violation into a costly endeavor for both the employer and the Union.

5. If Awarded, Back Pay Should Be Limited (Exception 39)

It is undisputed that CHS offered to continue bargaining with the Union on March 30, 2017 and that the Union simply ignored that invitation. Even if the Board were to decide that CHS' meeting with the Union before implementing discipline somehow fell short of whatever

interpretation of *Total Security* it decides to apply, the Board should not reward the Union and provide a windfall to Ms. Baker because the Union decided that it wanted to wait for a Board determination. Such an approach would do nothing to further the purposes of the Act. While no back pay should be awarded, any award of back pay should be cut off as of the date the Union refused to bargain.

6. **The Remedies Were Inappropriate (Exceptions 41, 42, 43)**

That the ALJ did not really understand the difference between a case under the unworkable *Total Security* framework and a traditional case of discharge for reasons that violate the Act is reflected in the fact that she imposed stock remedies for unlawful discharge cases that simply make no sense in a *Total Security* situation. If an employer had actually violated *Total Security*, a rational remedy might be to reinstate the employee and then order the parties to engage in the limited bargaining envisioned by *Total Security* before proceeding with discipline. *Total Security* does not mandate that the employer may not impose discipline, or even say under what terms the employer may impose discipline.

Yet the ALJ in this case made no such order. Instead she ordered full reinstatement and additionally ordered that the employer take steps that could eliminate the ability of the employer and the union to continue bargaining. The ALJ ordered that CHS "expunge from its files any and all references to the discharge of Dirgni Baker, and notify her in writing that this has been done and that evidence of this unlawful action will not be used against him [sic.] in any way." ALJD p. 27. While perhaps this mandate could be read narrowly to allow the employer to retain all the underlying evidence that led to the discharge while carefully redacting references to the discharge itself, the order is inherently at odds with the idea of continued bargaining.

The ALJ in this case merely decided that if she had been the employer she personally would not have fired Dirgni Baker for "a snippy comment to a co-worker." ALJD p. 18. That goes far beyond the proper role for the ALJ or the Board to play in a situation in which there has been no allegation of any illegal motivation on the part of the employer. The ALJ was merely substituting the her own judgment for that of the employer.

Conclusion

Total Security was wrongly decided and should be reversed. Alternatively, Community Health Services followed the National Labor Relations Act as interpreted by the Board in *Total Security*. CHS properly terminated Dirgni Baker for repeated inappropriate interactions with co-workers and an inability to perform her duties as the employer required. If the Board were to decide otherwise the remedies suggested by the ALJ do not fit with the framework of *Total Security* and the facts of this case. This matter should be dismissed.

BY ITS ATTORNEY

THE RESPONDENT
Community Health Services, Inc.

By _____

Hugh F. Murray, III
McCarter & English, LLP
CityPlace I, 185 Asylum Street
Hartford, CT 06103
Tel: (860) 275-6753
Fax: (860) 560-5903

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 1 – SUBREGION 34

COMMUNITY HEALTH SERVICES, INC. and AMERICAN FEDERATION OF TEACHERS, CT AFT, AFL-CIO	Cases 01-CA-191633

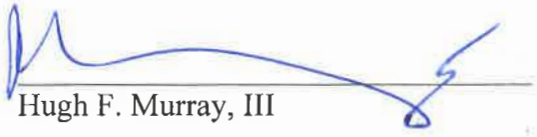
CERTIFICATE OF SERVICE OF: RESPONDENT'S BRIEF

On **February 27, 2019**, I served the above-entitled document by **regular mail and electronic mail** upon the followings, addressed to them at the following addresses:

Elizabeth Guerra
Field Representative
AFT Connecticut
35 Marshall Road
Rocky Hill, CT 06067-1400
eguerra@aftct.org

John McGrath
NLRB SubRegion 34
450 Main St., Ste 410
Hartford, CT 06103-3078
John.McGrath@nlrb.gov

Michael Doyle, Esq.
Ferguson, Doyle & Chester, P.C.
35 Marshall Rd.
Rocky Hill, CT 06067-1400
michaeldoyle@fdclawoffice.com



Hugh F. Murray, III